IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

CONTEMPT PETITION NO.148 OF 2003
IN
WRIT PETITION NO.2144 OF 2000

Smt.Kamalabai Vitthal Suryawanshi).. Petitioner

Versus

The State of Maharashtra and others).. Respondents

Mr.Machindra A.Patil for the Petitioner.

Mr.R.M.Patne, A.G.P., for Respondent Nos.1 and 3.

Mr.R.V.More for Respondent No.2.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 12TH AUGUST 2005

P.C.:

. This Petition has been filed against the Respondent for having committed contempt of this Court's order dated 14th June 2000 passed in Writ Petition No.2144 of 2000. In this Writ Petition, the Petitioner had contended that her husband was working with the Zilla Parishad as a primary teacher w.e.f. from 22nd July 1964. He was suffering from cancer from 1995 and, therefore, opted for voluntary retirement on 31st May 1996. The Petitioner's husband was again hospitalised and died as a result of cancer. An application was made by the Petitioner on 7th July 1997 for appointing her son in the Zilla Parishad on compassionate grounds.

This request of the Petitioner was denied and, therefore, she filed Writ Petition No.2144 of 2000. This Petition was opposed by the Zilla Parishad, the Respondent herein, by contending that in view of the Government Resolution dated 26th October 1994 appointment on compassionate grounds could be made only in the case of employees who had died during their employment and in the case of employees who have retired on medical grounds. The Zilla Parishad has contended that since the Petitioner's husband had voluntarily retired from service, his son would not be considered for appointment on compassionate grounds. The Division Bench of this Court had directed that the application of the Petitioner be considered by Zilla Parishad in accordance with the Government Resolution and to pass suitable orders, by observing thus in paragraphs 4 and 5 :

> "4. Shri More for the Zilla Parishad does not challenge the certificate annexed at Exh. B to the Petition. However, Shri More submitted that under the relevant Govt. Resolution, appointment on compassionate ground could be made only in case of the employee who has died during the employment and the employees who have been made to retire on medical ground. Shri More urged, that the Petitioners husband has taken voluntary retirement from such the Petitioners son cannot be considered for appointment on compassionate ground.
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> 5. We find it difficult to agree with the arguments of Shri More. It is clearly seen

> from the record that the Petitioners husband was suffering from cancer from 1995. He was required to take voluntary retirement on account of illness. In the circumstances, we are not inclined to accept the contention of Shri More that the Petitioners husband had opted for voluntary retirement and therefore, the case of the Petitioner cannot be considered for appointment on compassionate ground. In the facts of the case, we are inclined to hold that the Petitioners application ought to have been considered by Zilla Parishad in accordance with the Government Resolution. We, therefore, direct the Zilla Parishad to consider the application made by the Petitioner in accordance with the Govt. Resolution and pass suitable orders. Rule is made absolute accordingly."

2. The Petitioner was informed by Zilla Parishad that it was unable to appoint the Petitioner’s son on compassionate grounds. Reliance is placed on the letter dated 26th August 1996 whereby it has been resolved that in case of category "C", in which the Petitioner’s husband was working, the relatives of those who retire due to medical reasons at the age of 55 would be considered for employment on compassionate grounds.

3. A similar submission was made before the Division Bench which has been negatived by the Division Bench as can be seen from its observations quoted above. The Petitioner’s husband was suffering from cancer from 1995 and voluntarily retired from service on 1996 and, therefore, the Division Bench had declined to accept the contention of the learned Advocate for the Zilla Parishad that the Petitioner has no case for being

appointed on compassionate grounds.

4. I have considered the resolution of the Government as well as the order of the Division Bench of which the Petitioner claims that there is a breach. The fact that the Petitioner’s husband expired due to cancer is undisputed. That the Petitioner’s husband was suffering from cancer from 1995 is not denied. In these circumstances, it is obvious that he accepted voluntary retirement only on account of his ill-health. It would be harsh therefore to refuse appointment on compassionate grounds to the Petitioner’s son. In my opinion, without setting the precedent, the Respondent should employ the Petitioner’s son in the category which suits his qualifications in the Zilla Parishad. The said appointment should be made within three months from today.

5. Contempt Petition disposed of accordingly.